

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

October 20, 2005

A meeting of the Board of Environmental Protection was held on Thursday, October 20, 2005, at the Holiday Inn / Ground Round, Augusta, Maine. Matthew Scott, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

**Board:** Nancy Anderson, Elizabeth Ehrenfeld, Donald Guimond, Ernest Hilton, Virginia Plummer, Denis Culley, Nancy Ziegler, Matt Scott

Absent: Jean T. Wilkinson

<b><u>Staff:</u></b>	Bureau of Land and Water Quality	Dennis Merrill
	Bureau of Land and Water Quality	Mike Mullen
	Bureau of Land and Water Quality	Judy Gates

**Others:** David P. Littell, Deputy Commissioner  
Mary Sauer, Assistant Attorney General  
Terry Hanson, Administrative Assistant

***(Meeting adjourned at approximately 4:00 p.m.)***

***Draft***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Deputy Commissioner David Littell reported the following:

S.D. Warren: The US Supreme Court accepted review of the case SD Warren vs. Board of Environmental Protection. The Department and the Office of the Attorney General are preparing for this case. The case challenges the fundamental authority of the Department and the Board to impose conditions on the discharge from a dam through the water quality certification provisions of the Clean Water Act. The Supreme Court also accepted two cases involving a challenge to the authority of Congress to pass laws to regulate wetlands that are not part of navigable waters. Maine has this authority under our own laws.

*Board member Hilton asked if the water quality certification in the SD Warren case was also part of state law?*

Mr. Littell confirmed that is how the State incorporate State requirements into FERC licenses. The argument in this case is that the federal energy law preempts state authority except as allowed under Section 401 of the Clean Water Act.

*Chairman Scott stated that the out come of this matter could be significant.*

Deputy Commissioner Littell agreed communicating that potentially a much broader impact could result if the Court finds that the Department does not have the authority to issue water quality certifications in these instances. The entire approach to watershed permitting and the Total Maximum Daily Load (TMDL) as approved by the EPA is at risk.

*Board member Plummer asked when the argument would be heard.*

Assistant Attorney Mary Sauer speculated that with the State's brief due late this year, argument may start as early as February 2006.

Deputy Commissioner also noted that the Board has received petitions from two environmental groups to revoke, modify or suspend the water quality certifications related to 11 hydro facilities on Androscoggin and Kennebec rivers. Cindy has been communicating with the parties to discuss the schedule associated with the petitions. The focus of these petitions is fish passage and the American Eel. The Department and the Department of Marine Resources have been working together with hydro owners to address downstream eel passage. Benton Falls and Burnham dam projects are not subject to petition, but are referenced as examples of fish passage resolution in the petition.

*Board member Ziegler asked how many of these facilities are at issue and what is the status of their licenses -- Is it possible to get an overview of these facilities and where they are in licensing?*

The Department can provide an overview of the hydro electric facilities and the FERC license status.

*Chairman Scott also wanted to include the mortality of fish at these sites.*

The Department relies on information from the Dept. of Marine Resources related to mortality of species at these facilities (based on field observations). Department staff has submitted a request that a staff person from DMR be available when the Board considers these petitions.

Aroostook River Release: There was a 5,500 hundred gallon heating oil release on Monday to the Aroostook River which quickly emptied into the St. John. Little fuel was captured because of high water levels due to recent storm events.

Freedom of Access Act (FOAA): The Department has received a large number of freedom of access requests. The volume and intensity is unprecedented. The enforcement director spends 100% of his time addressing these requests as opposed to the 10% allocated in his job description. Record retrieval is intense and voluminous including email back-up tapes from electronic record retrieval. These requests create a time management and resource issue for the Department. The requesting parties have commented that they do not believe information delivery is conforms with the Freedom of Access law.

Board member Ziegler asked about the types of information being sought.

Mr. Littell responded that Board materials are limited to copies of orders and tapes. The primary focus seems to be related to email. A number of these FOAA requests are related to the Androscoggin; however, others include Holtrachem, Dragon Products, and the paint fee law.

**CHAIRMAN'S COMMENTS:** None

**B. EXECUTIVE ANALYST COMMENTS:** None

**D. BOARD CALENDAR:** Reviewed

**E. DEPARTMENTAL ORDERS:** Reviewed

**F. EXECUTIVE SESSION:** None

## II CONSENT AGENDA ITEMS

The Board voted (8-0-0-1) on a motion to approve consent agenda items 1 and 2 as presented.

*Board members. Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Jean T. Wilkinson was absent.*

1. SARGENT & SONS BUILDERS, INC., Rangeley – Administrative Consent Agreement and Enforcement Order (BLWQ - Land)
2. NORTHBROOK PROPERTIES, INC. dba BIRCH ISLAND BUILDERS, Friendship – Administrative Consent Agreement (BLWQ-Land)

### III. Regular Agenda

1. CENTRAL MAINE POWER COMPANY INTERIM HAZARDOUS WASTE STORAGE FACILITY CLOSURE AND TERMINATION OF INTERIM LICENSE, Augusta, Rockland, Belfast, Eustis, Waterville and Dover-Foxcroft (approval)

Staff: Stacy Ladner, Bureau of Remediation and Waste Management

The Board voted (8-0-0-1) on a motion to approve Central Maine Power Company Interim Hazardous Waste Storage Facility Closure and Termination of Interim License for Augusta, Rockland, Belfast, Eustis, Waterville and Dover-Foxcroft. The vote was taken pursuant to 38 M.R.S.A. Section 1301 et seq. and 06-096 CMR Chapters 850 – 857, Maine Hazardous Waste Management Rules.

*Board members. Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Donald Guimond, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Jean T. Wilkinson was absent.*

2. CHAPTER 415 REASONABLE COSTS FOR THE HANDLING AND RECYCLING OF ELECTRONIC WASTES / new (\*adoption)

Staff: Carole Cifrino, Bureau of Remediation and Waste Management

The Board voted (8-0-0-1) on a motion to adopt Chapter 415, Reasonable Costs for the Handling and Recycling of Electronic Wastes, with the following amendments. The vote was taken pursuant to 38 M.R.S.A Sections 341-D and 1610.

Amendments:

Section 1B. Consolidation facility

... rule, **16,000** ~~20,000~~ pounds of covered...

Section 2C. Allowable costs. (1) ...trailer is full **as defined in section 1B**

Section 3. Operational standards. A. Required consolidator services options. (2)

... the manufacturer when it has ~~processed~~ **handled** 20,000 pounds...

...consolidator bills the manufacturer for ~~processing~~, **handling** of the manufacturer's..

*Board members. Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Donald Guimond, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Jean T. Wilkinson was absent.*

3. CHAPTER 418, BENEFICIAL USE, CHAPTER 402 TRANSFER STATIONS AND STORAGE SITES FOR SOLID WASTE, CHAPTER 405 WATER QUALITY MONITORING, LEACHATE MONITORING AND WASTE CHARACTERIZATION, and CHAPTER 409, PROCESSING FACILITIES / AMENDMENTS (post to public hearing)

Staff: Paula Clark, Bureau of Remediation and Waste Management

The Board voted (8-0-0-1) on a motion to post amendments to Chapters 402, Transfer Stations and Storage Sites for Solid Waste; Chapter 405, Water Quality Monitoring, Leachate Monitoring and Waste Characterization; Chapter 409, Processing Facilities; and Chapter 418, Beneficial Use to public hearing on November 17, 2005 at 1:30 p.m. as proposed.

The vote was taken pursuant to 38 M.R.S.A Sections 341-D and 1610.

*Board members. Nancy Anderson, Denis Culley, Elizabeth Ehrenfeld, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Jean T. Wilkinson was absent.*

**BOARD RECONVENED AT 1:00 TO CONDUCT A PUBLIC HEARING IN THE MATTER OF:**

Chapter 335, Significant Wildlife Habitat

Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law, Section 15. Wildlife and Fisheries